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6 **UNITED STATES DISTRICT COURT**  
7 **WESTERN DISTRICT OF WASHINGTON**  
8 **AT SEATTLE**

8 GERMAN RUVALCABA ROSALES, )  
9 )  
9 Petitioner, ) Case No. C12-562-RSL-BAT  
10 v. ) **REPORT AND**  
11 ICE FIELD OFFICE DIRECTOR, ) **RECOMMENDATION**  
12 Respondent. )  
13 \_\_\_\_\_ )

14 I. INTRODUCTION AND SUMMARY CONCLUSION

15 Petitioner German Ruvalcaba Rosales has filed a petition for writ of habeas corpus  
16 pursuant to 28 U.S.C. § 2241, challenging his immigration custody and seeking either supervised  
17 release or an individualized bond hearing. Dkt. 7. On June 14, 2012, petitioner was accorded a  
18 bond hearing before an Immigration Judge, and was granted release under bond of \$10,000. Dkt.  
19 17, Ex. 1. Because petitioner has received a bond hearing and was granted release under bond,  
20 the Court recommends that the habeas petition be **DENIED**, respondent's motion to dismiss be  
21 **GRANTED**, and this case be **DISMISSED** with prejudice.

22 II. BACKGROUND AND PROCEDURAL HISTORY

23 Petitioner is a native and citizen of Mexico who reentered the United States without

1 inspection in February 2005 after being subjected to expedited removal. Administrative Record  
2 (“AR”) L603-04. On August 18, 2011, the Department of Homeland Security (“DHS”)  
3 encountered petitioner at the Snohomish County Jail following his arrest for driving without a  
4 license. AR R67. Petitioner was transferred to immigration custody and served with a Notice of  
5 Intent/Decision to Reinstate Prior Order. AR R66, L26. Petitioner expressed a fear of being  
6 returned to Mexico and was referred to an Immigration Judge (“IJ”) for withholding only  
7 proceedings. AR at R66.

8 On December 20, 2011, an IJ found petitioner had not met his burden of proof and denied  
9 his applications for withholding of removal. AR at L592-607. Petitioner appealed the IJ’s  
10 decision to the Board of Immigration Appeals (“BIA”). Dkt. 13, Ex. A. While his appeal was  
11 pending, petitioner filed the instant habeas corpus petition, challenging the lawfulness of his  
12 continued detention and seeking release under an order of supervision or on bond. Dkt. 7. On  
13 April 24, 2012, the BIA dismissed petitioner’s appeal of the IJ’s removal order. Dkt. 13, Ex. A.  
14 Petitioner filed a petition for review and motion for stay with the United States Court of Appeals  
15 for the Ninth Circuit, causing a temporary stay to automatically issue. *See Ruvalcaba-Rosales v.*  
16 *Holder*, No. 12-71405, Dkt. 1 (9th Cir. May 7, 2012). Petitioner’s petition for review remains  
17 pending.

18 On May 18, 2012, respondent moved to dismiss petitioner’s habeas corpus petition,  
19 asserting that petitioner had been properly detained at all times and that a bond hearing had been  
20 scheduled for May 24, 2012, in compliance with *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th  
21 Cir. 2008). Dkt. 4. On May 31, 2012, respondent filed a notice informing the Court that on May  
22 24, 2012, petitioner appeared in immigration court with counsel, and the bond hearing was reset  
23 to June 14, 2012. Dkt. 16, Ex. A. On June 18, 2012, respondent filed another notice indicating

1 that on June 14, 2012, the IJ granted petitioner's request for bond and ordered him released under  
2 bond of \$10,000. Dkt. 17, Ex. A. Petitioner waived appeal of the IJ's custody decision.

### 3 III. DISCUSSION

4 Title 28 U.S.C. § 2241(c)(3) authorizes a district court to grant a writ of habeas corpus  
5 whenever a petitioner is "in custody in violation of the Constitution or laws or treaties of the  
6 United States." 28 U.S.C. § 2241(c)(3). "[T]he Fifth Amendment entitles aliens to due process  
7 of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (citations  
8 omitted). "Even where detention is permissible, however, due process requires 'adequate  
9 procedural protections' to ensure that the government's asserted justification for physical  
10 confinement 'outweighs the individual's constitutionally protected interest in avoiding physical  
11 restraint.'" *Casas-Castrillon*, 535 F.3d at 950 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690  
12 (2001)).

13 When an alien's removal has been stayed pending judicial review of the order of  
14 removal, the alien is detained pursuant to the Attorney General's discretionary authority under 8  
15 U.S.C. § 1226(a). *Casas-Castrillon*, 535 F.3d at 951; *Prieto-Romero v. Clark*, 534 F.3d 1053,  
16 1065-66 (9th Cir. 2008). Procedural due process requires that such aliens be afforded an  
17 individualized bond hearing before an immigration judge, at which the government bears the  
18 burden to prove by clear and convincing evidence that the alien is a flight risk or a danger to the  
19 community to justify denial of bond. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

20 Here, the record shows that on June 14, 2012, petitioner received an individualized bond  
21 hearing before an immigration judge who granted him release under bond of \$10,000, and  
22 petitioner waived appeal of the IJ's bond determination. Dkt. 17, Ex. A. Because petitioner was  
23 afforded an individualized bond hearing before an IJ and was granted release under bond, he has

1 received all of the benefits of due process he is entitled, and his petition has become moot and  
2 should be dismissed. *See Prieto-Romero*, 534 F.3d at 1065-66 (holding that due process is  
3 satisfied once an has “had an opportunity to contest the necessity of his detention before a neutral  
4 decisionmaker and an opportunity to appeal that determination to the BIA.”); *see also Flores-*  
5 *Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008) (dismissing as moot a portion of habeas  
6 petition which challenged detention without bond upon the granting of a bond hearing).

#### 7 IV. CONCLUSION

8 For the foregoing reasons, the Court recommends that petitioner’s habeas petition be  
9 **DENIED**, respondent’s motion to dismiss be **GRANTED**, and this matter be **DISMISSED** with  
10 prejudice. A proposed order accompanies this Report and Recommendation.

11 Any objections to this Recommendation must be filed and served upon all parties no later  
12 than **July 30, 2012**. If no objections are filed, the matter will be ready for the Court’s  
13 consideration on **August 3, 2012**. If objections are filed, any response is due within 14 days  
14 after being served with the objections. A party filing an objection must note the matter for the  
15 Court’s consideration 14 days from the date the objection is filed and served. Objections and  
16 responses shall not exceed 10 pages. The failure to timely object may affect the right to appeal.

17 DATED this 9th day of July, 2012.

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20 BRIAN A. TSUCHIDA  
21 United States Magistrate Judge  
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